

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the matter of	:	CG Docket No. 02-278
	:	
Rules and Regulations Implementing the	:	CG Docket No. 05-338
Telephone Consumer Protection Act of 1991	:	
	:	
Petition of Craig Moskowitz and Craig	:	
Cunningham	:	

REPLY COMMENTS OF VINCENT LUCAS

This is in reply to commenters that argue that consumers who “release” their telephone numbers can provide explicit instructions not call the number using an ATDS or artificial or prerecorded message.

Proposition: When a website *requires* a telephone number in order to complete a transaction and the website does not provide an option to opt-out of receiving calls by ATDS or artificial or prerecorded message on the same webpage where the telephone number is required, the act of providing the telephone number does not constitute prior express consent to receive telephone calls by ATDS or artificial or prerecorded message.

Hereafter, “robocall” refers to a call made using an ATDS or containing an artificial or prerecorded message.

Many internet commerce websites require the consumer to provide a telephone number and an email address. It is usually completely unnecessary for them to require a telephone number. When I do an internet commerce transaction, I expect all communication pertaining to the transaction to be done by email. I believe the real motive for demanding a telephone number is usually to solicit purchases in the future under the Established Business Relationship

exemption to the Do Not Call list regulations. In some cases, I can get around the problem by providing a clearly invalid telephone number. However, some websites are able to detect invalid telephone numbers. When I am forced to provide my real telephone number and the webpage does not provide a checkbox for me to opt-out of robocalls and telephone solicitations, I have to go out of my way to tell the website owner not to make robocalls or solicitations to my telephone number. I have to search the website for an email address to write to. On many sites, an email address is not provided, and I have to use the website's "Contact Us" page to send a message. One problem with using the "Contact Us" page is that the consumer does not have proof that they actually sent the message unless the company sends the consumer a response to the message. Some sites do not even have either an email address or "Contact Us" page, but instead have a customer service telephone number (which may force the user to go through an automated response system only to be put on hold indefinitely.)

Another problem is that there is a delay between the point when the telephone number is put into the company's automated system by supplying it on the webpage, and the time when it is manually removed by someone who responds to my request not to receive robocalls. Who knows whether some judge might think that the company is entitled to some sort of "safe harbor" period to respond to my request not to be robocalled.

In short, the website can demand a phone number when it is not really needed and make it very inconvenient for the consumer to provide do-not-robocall-me instructions as contemplated by the 1992 FCC Report and Order.

The 1992 FCC Report and Order was written before the World Wide Web was available to the public.¹ At the time, it was very easy for consumers to provide their do-not-robocall-me instructions at the same time that they provided their phone number. On a paper form, they could write the instructions right next to their number. On a website form, consumers cannot write in such instructions on the form.

1992 FCC Report and Order ¶ 31² needs to be reconsidered in light of the World Wide Web. When a website requires a telephone number but does not provide an option to opt-out of receiving robocalls on the same page where the telephone number is requested, the consumer has not been given an appropriate opportunity to provide the “instructions to the contrary” contemplated by the 1992 Report and Order, and therefore the act of providing the telephone number is not prior express consent to receive robocalls.

Indeed, in these circumstances, providing a telephone number is not even evidence that the “party wishes to be reached” at that number. In many cases, the consumer provides the telephone number only because the website *does not give the consumer any choice but to provide a telephone number*, despite the fact that the consumer actually does not want to be contacted by telephone.

Respectfully submitted,

Vincent Lucas

¹ The World Wide Web was available to select physics researchers but not the general public. For a brief history, see <https://home.cern/topics/birth-web>

² “If a call is otherwise subject to the prohibitions of § 64.1200, persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary. Hence, telemarketers will not violate our rules by calling a number which was provided as one at which the called party wishes to be reached.” 1992 Report and Order ¶ 31